

SENTENCING COMMISSION MINUTES

Committee	Utah Sentencing Commission
Date	Wednesday, December 2, 2015
Time	Noon – 2 p.m.
Location	Utah State Capitol, Senate Caucus Room
Members Present	Patrick Anderson, Judge Mark Andrus, Chyleen Arbon, Craig Barlow, Paul Boyden, Debbie Whitlock for Susan Burke, Darin Carver, Judge Michele Christiansen, Mike Haddon for Rollin Cook, Sen. Gene Davis, Al Emery, Scott Garrett, Ron Gordon, Rachelle Hill, Rep. Brian King, Richard Mauro, Rep. Marc Roberts, Peter Stirba, Sheriff James Tracy, Judge Vernice Trease, Pam Vickrey, Christina Zidow
Members Excused	Shima Baradaran, Chief Craig Black, Judge Thomas Low, Judge Julie Lund, Senator Dan Thatcher
Staff & Visitors	Staff: Jo Lynn Kruse, Cuong Nguyen, Dr. Ben Peterson, Ned Searle, David Walsh, Doreen Weyland Visitors: Krista Airam, Susan Allred, Dan Blanchard, Judge McCullagh, Dawn Marie Rubio, Melanie Scarlet
Agenda Item	Welcome – Approval of Minutes
Notes	Peter Stirba called the meeting to order and welcomed everyone. Richard Mauro made the motion to approve the October minutes. Judge Andrus seconded the motion which passed unanimously .
Agenda Item	Distribution of JRI Coins (tape 17:20)
Notes	Ron distributed JRI Challenge Coins which CCJJ developed to recognize those who have participated in JRI and also as a reminder of the underlying purpose and goals of JRI. Ron and Jennifer thanked the members of the Commission for the significant amount of time and work already provided by the Commission pursuant to HB348.
Agenda Item	Dissolution of Inactive Subcommittees/Establishment of Executive Committee (tape 6:00)
Notes	<p>Peter proposed the dissolution of the following committees which have either completed their work or have no pending assignments: AP&P Subcommittee, Guidelines Subcommittee, and Anomalies Subcommittee. Paul Boyden and Patrick Anderson indicated that the Anomalies Subcommittee should be retained and had one pending issue yet to be resolved, which is the discrepancy for jurisdiction of restitution between probationers and parolees, as identified in <i>State v Poole</i>. Senator Davis made the motion to dissolve the AP&P Subcommittee and the Guideline Subcommittee. Craig Barlow seconded the motion which passed unanimously.</p> <p>Peter noted that the Justice Court subcommittee has requested to be renamed the Misdemeanor Subcommittee, to better reflect that misdemeanors are not limited to Justice Courts alone. The Juvenile Subcommittee also requested they be renamed the Juvenile Justice Subcommittee, to better reflect the purpose and scope of the subcommittee. Richard Mauro made the motion to change the name of the Justice Court Subcommittee to the Misdemeanor Subcommittee. Judge Christiansen seconded the motion which passed unanimously. Christina Zidow made the motion to change the name of the Juvenile Subcommittee to the Juvenile Justice Subcommittee. Rep. Brian King seconded the motion which passed unanimously.</p> <p>Peter proposed that pursuant to the by-laws and in anticipation of the coming legislative session, the Commission create an Executive Committee. Peter noted that the Executive Committee has previously been composed of Paul Boyden and Patrick Anderson in addition to the Chair (Carlene Walker). Peter proposed that the composition of the Executive Committee should be more inclusive of those who are most impacted by sentencing and release decisions for adult and juvenile offenders, as that is the Commission's statutory charge. While prosecution and defense perspectives are important, the perspectives of the Board of Pardons and Parole, the judiciary, the Department of Corrections, treatment providers, and the juvenile justice system should also be included. Paul Boyden objected indicating the practical concerns in coordinating meetings and attendance with so many people. Paul also objected to the inclusion of two defense attorneys.</p> <p>Jennifer explained that meetings of the Executive Committee occur every Monday during the legislative session, with the Sentencing Commission Executive Committee meeting before noon in her office and then attend the larger CCJJ meeting at noon. Jennifer indicated that if the Executive Committee is composed of a larger group, we will likely need to meet in a room on the first floor of the Senate Building instead of her office and that she would be willing to facilitate a conference call for those who cannot attend in person and also distribute proposed bills prior to the Monday meeting. Jennifer indicated it will likely require more work on her part, but she is willing to do so if that is the will of the body. Peter would speak on behalf of the Commission at the CCJJ noon meeting. Pam would speak on behalf of the Commission in his absence as the Vice Chair. Jennifer would then attend the legislative hearings during the week to speak as a representative of the full Commission on any bills the Executive Committee decides to support or oppose. Jennifer would not speak if we take no position on a bill or where the bill is beyond the scope of our Commission's purpose.</p> <p>Senator Davis made the motion to approve the following persons proposed by Peter to serve on the Executive</p>

	<p>Committee: Peter Stirba (Chair of the Commission); Pam Vickrey (Vice Chair of the Commission and Bar Commission juvenile defense attorney); Rollin Cook (Director of Department of Corrections or his designee, Mike Haddon); Chyleen Arbon (Board of Pardons and Parole designee); Judge Trease (Third District Court Judge); Darrin Carver (Juvenile Offender Rehabilitation Provider); Scott Garrett (Juvenile Prosecutor, Statewide Association of Prosecutors); and Patrick Anderson (Director of Salt Lake Legal Defenders). Richard Mauro seconded the motion which passed with one no vote from Paul Boyden.</p>
Agenda Item	Report from Juvenile Justice Subcommittee (tape 20:24)
Notes	<p>Guidelines Proposal – Pam Vickrey stated that the current matrix doesn't reflect what the sentence actually is and then discussed the new matrix under discussion. Although the matrix has been under discussion since April of 2014 and the subcommittee is making progress, they are not yet prepared to request approval from the full Commission for actual publication. Pam has meetings scheduled to attend the Board of Juvenile Court Judge's meeting, the Juvenile Probation Officers' meeting, and the State Board of Education, all of which are intended to solicit feedback and input before moving forward.</p> <p>Craig Barlow asked what is wrong with the current matrix and whether we really need a new one. Darin Carver said that the new matrix is a more evidenced-based tool and the old one contains boxes like "drug related" or "non drug related" which don't make a lot of sense to anyone. Pam also explained that aside from juvenile probation, prosecution and defense attorneys don't actually use the current matrix. The new version is more reflective of what actually occurs in a juvenile disposition hearing. The current one doesn't even account for all of the risk and needs assessment tools that are in use and the aggravating and mitigating factors were developed in 1997 and updated slightly in 2004. Sometimes an offense takes into account an element of a crime (such as a weapon), and then the matrix counts it again, and then the aggravating factors potentially count it a third time. HB348 didn't require that we look at the juvenile delinquency history scoring in addition to the adult criminal history scoring, but it doesn't make a lot of sense to critically review the adult guidelines and ignore juvenile guidelines with similar issues. The focus in HB348 was to eliminate double counting and focus on factors relevant to re-offense. That has been the focus of many of the revisions in the new matrix and the aggravating/mitigating factors which Krista Airam's smaller working group has been working on. There has been a lot of work invested already, but we are still in need of further collaboration, as this could potentially have major impacts system-wide. Pam asked the Commission to delay a vote on the approval of the new guidelines and to instead allow the Juvenile Justice Subcommittee to continue working on the new matrix. The next Juvenile Justice Subcommittee meeting is on January 22, which is after the next full Sentencing Commission meeting so we will likely not have anything for approval until our April Annual Meeting.</p> <p>Legislative Item: incarceration of status offenders - Pam also discussed the issue of status offenders and the elimination of the valid court order exception (VCO). There will be a meeting to discuss this with the Judges on Dec. 11th. The reauthorization of the OJJDP is pending at the federal level and will likely tie future funding to the elimination of incarceration for juveniles in this situation.</p>
Agenda Item	Legislative Items Identified During Revision of Guidelines (tape 6:40)
Notes	<p>Judge McCullagh, Jennifer Valencia and Dan Blanchard reviewed the following:</p> <ul style="list-style-type: none"> • Reclassification of traffic, boating and other regulatory Class C's (retain public safety violations) • Strike FTA & Bail Jumping Offenses • Domestic Violence: add intimate partner definition; allow judicial discretion in ordering treatment; ensure due process in jail release agreements/orders • Supervision: extend "supervised" probation standards to county and private providers; create consistency of standards; clarify modification of terms consistent with Form 10 • Restitution: codify <i>State v. Robinson</i> and clarify criminal accounts receivable <p>Judge McCullagh, Chair of the Misdemeanor Subcommittee, discussed several proposals including substantial revisions to the restitution and supervision statutes. We could propose very specific revisions to address the issues which have been identified during the guideline revision process. We could also streamline both restitution and supervision statutes, which are currently located in multiple different statutes and are somewhat confusing unless one is familiar with the historical development of the Utah Code. Several concerns have been raised that we don't want any unintended consequences without significant collaboration as to the intent and purpose of such major revisions. Jennifer will follow up with Gary Scheller to determine if a resolution can be reached for this year's session.</p> <p>Dan Blanchard, Deputy Director of AP&P, explained that "supervision" services in the Code is interpreted by most judges to only apply to AP&P. With the expansion of supervision services to county providers through priority C of the CPIP grant funds under JRI, there is some confusion as to whether other providers will be held to the same standards of evidence-based practices that AP&P is ordered to utilize. In addition, DUI probation/parolees are currently ineligible for earned time credits. They don't have the incentive other probation/parolees have. Providing some sort of incentive for compliance appears consistent with JRI. Paul Boyden expressed concern regarding NHTSA funds and indicated the DUI Subcommittee of USAAV would follow up on that issue. Jennifer also indicated she would contact Linda Hull and would attend the next CCJJ meeting in order to obtain additional</p>

	<p>feedback before moving forward on these issues.</p> <p>Jennifer discussed the domestic violence issues identified during the revision process. The guidelines have added intimate partners as a higher degree of severity than other cohabitants. The code currently does not distinguish, but during the revision process we indicated we would pursue a legislative amendment consistent with the guidelines. In addition, mandated domestic violence treatment is an ongoing concern which limits judicial discretion and is also inconsistent with evidence based practices.</p> <p>Christina Zidow made the motion to consider the DV revisions as a priority item. Al Emery seconded the motion which passed unanimously. Jennifer will attempt to locate a legislative sponsor. The remaining issues will be addressed at our next meeting. Please contact Jennifer with any suggestions and/or feedback on legislative items for discussion at our January meeting.</p>
Next Meeting	The next full meeting of the Sentencing Commission will be on January 6, 2016 at noon, Utah State Capitol Bldg, Senate Caucus Room.

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ